generate. Accordingly, Sprint has initiated several procedures designed to assist customers when they have complaints about pay-per-call services and to direct customer complaints to the entity in the best position to address the complaint -- the pay-per-call provider.

For instance, the United companies, depending in part on local regulatory policies and in part on billing and collection agreements with interexchange carriers ("IXCs") and other billing clearinghouses, generally follow one of two procedures with regard to customer complaints about pay-per-call services. Under one procedure, all customers who complain about pay-per-call services receive an immediate credit, are offered free blocking placed from the subscriber's telephone and whether there are any extenuating circumstances beyond the subscriber's control. If United determines the call was placed and there are no extenuating circumstances United will continue to bill and attempt to collect the charges and will urge the customer to accept free blocking on that customer's line.

Sprint believes that these actions help customers receive satisfaction by focusing the disputes where they belong--on the pay-per-call provider. Sprint believes the thrust of the rules ultimately adopted in this proceeding should be to control the unscrupulous pay-per-call provider; the rules should not burden common carriers (and ultimately consumers) with unnecessary regulations.

Sprint believes the FTC's proposed rules, if modified as proposed herein, can deter the unscrupulous pay-per-call provider and help the consumer who has been subject to unscrupulous practices. The modifications proposed by Sprint will focus dispute resolution where it belongs -- the pay-per-call provider.

II. COMMISSION'S QUESTIONS

A. Question 1.a. Definition of "Presubscription or Comparable Arrangement." In Question 1.a, the Commission requests comments on whether the proposed definition of "presubscription or comparable arrangement" is "clear, meaningful, and appropriate." Sprint believes that the term "presubscription or comparable arrangement" can be defined in a way which is consistent with the intent of the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"),[2] and which, at the same time, avoids a loophole in pay-per-call regulations endangering the protection from unscrupulous providers of goods and services sought by the Act.

Pay-per-call services, as defined in the Communications Act (47 U.S.C. Section 228), do not include "service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service." The definition of "presubscription or comparable arrangement" is therefore critical to a determination of which services must comply with the proposed pay-per-call regulations. Because the term "presubscription or comparable arrangement" has not been defined by the statute or the FCC, the FTC proposes the following definition in Section 308.2(e):

> Presubscription or comparable arrangement means a contractual agreement established prior to the initiation of a pay-per-call service between a provider of pay-per-call services and a consumer. No action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating such a contractual agreement.

The difficulty with this proposed definition is that the key term "contractual agreement" is left undefined, except for a temporal bound requiring that the contract be established between

2. Pub. L. No. 102-556, signed into law on October 28, 1992.

the provider and the customer "prior to the initiation of a pay-per-call service." It is unclear, therefore, as to exactly what constitutes a "contract" sufficient to provide an exception to the pay-per-call rules. For example, it is unclear whether any contract must be in writing or signed (telephone presubscription arrangements are not necessarily established in writing), whether an oral agreement is sufficient, or whether a contract with a provider may be implied in certain instances. Obviously, if the term "contractual agreement" is left vague, it will be of no help in limiting providers from using the exclusion to avoid the pay-per-call regulations. Plainly, it would be helpful if the definition were revised to make explicit what constitutes a "presubscription or comparable arrangement" so that customers are properly protected by the pay-per-call regulations.

Sprint believes that the definition of "presubscription or comparable arrangement" should specify the information that the provider of goods or services must furnish the customer in order to be exempted from the pay-per-call requirements in the TDDRA. Specifically, the provider of such services should give its name and address and furnish a telephone number which the customer may use to obtain additional information about the service or register a complaint. In addition, the provider should inform the customer of the rates for the services provided and should promise to notify the customer of future rate changes.

The proposed definition is also less clear than might be desired in that it refers to pay-per-call services. The establishment of a "presubscription or comparable arrangement" is not a step to initiating a pay-per-call service, but rather a step to exempt the service from the pay-per-call category. Having established a "presubscription or comparable arrangement," no pay-per-call service will be provided. Rather than using "pay-per-call service" in the definition, Sprint suggests that it would be clearer to refer to the service as one for which the per-call or per-time-interval charge is greater than, or in addition to, the charge for the transmission of the call.

In light of the above, Sprint proposes the following definition:

> Presubscription or comparable arrangement means a preexisting business relationship which is established between the customer and the provider prior to the initiation of a call to the provider for which a per-call or per-time-interval charge is assessed greater than, or in addition to, the charge for the transmission of the call. Prior to the initiation of such call, the provider must identify its name and address, must furnish a telephone number which the customer may use to obtain additional information or to register a complaint, must inform the customer of the rates for service, and must promise to notify the customer of future rate changes. No action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating a presubscription or comparable arrangement.

B. Question 18. Disclosure of the Pay-Per-Call Provider's name and address in the preamble. Question 18 asks whether it is useful and appropriate for proposed section 308.5(a)(i) to require the pay-per-call provider's name as part of the preamble. The question further asks whether the rule should be expanded to include the pay-per-call provider's address.

Sprint believes a provider of pay-per-call services should be required to identify its name and address in the preamble. Sprint also believes a pay-per-call provider should be required to include its telephone number.

Sprint disagrees with the FTC's suggestion in Question 18 that the FCC's proposed regulation regarding a toll free or local telephone number that callers can use to obtain the name and address of the pay-per-call provider will be helpful to customers. The FCC proposes that a toll free or local number be furnished by carriers providing the billing and collection function to pay-per-call providers.[3] However, when a LEC is the billing entity, it will seldom be able to provide the customer with the name and address of the pay-per-call provider. The LEC rarely contracts directly with the pay-per-call provider for billing and collection services; rather, it contracts with the underlying IXC or a billing clearinghouse. In these circumstances, the LEC will only be able to provide the telephone number of the underlying IXC or the billing clearinghouse.

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3. See, In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, Notice of Proposed Rule Making and Notice of Inquiry, FCC 93-87, released March 10, 1993.

In most consumer purchasing situations, the consumer knows the entity it is buying from at the time of the purchase. The consumer is usually in the vendor's premises; has the vendor's catalog that contains name, address, and telephone number; or has located the vendor's name, address, and telephone number through an advertisement--often a yellow pages directory. Sprint can think of no reason that justifies treating purchases from pay-per-call providers differently. Consumers should be able to learn who they are buying from at the time of purchase.

An analogous situation arises with telemarketing. In the recent telemarketing proceeding, the Federal Communication Commission required that artificial or prerecorded telephone messages delivered by automatic telephone dialing systems identify the name, address, and telephone number of the entity initiating the call.[4] Sprint believes this same requirement should apply to pay-per-call providers.

C. Question 30. Requirement of a PIN to access pay-per-call services. Question 30 asks whether the rules should include protection against the unauthorized use of a consumer's telephone and whether it is technically feasible to require all consumers to have an access code or PIN number which they must dial before being able to access any pay-per-call service.

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4. <u>In the Matter of Rules and REgulations Implementing the Telephone Consumer Protection Act of 1991</u>, CC Docket 8992-90, <u>Report and Order</u>, FCC 92-443, released October 16, 1992. Adopting $7 C.F.R. Section 64.1200(d).

Sprint believes that it may be technically feasible -- some day -- to utilize a PIN or access code in the fashion contemplated by the FTC's question. Such use of a PIN or access code would require that the LEC or IXC switch be able to recognize the PIN or access code dialing pattern in order to permit or deny a customer's access to pay-per-call services. This functionality is not readily available. The development and implementation of such technology would undoubtedly be expensive and would have to be recovered through all pay-per-call services, both the legitimate and unscrupulous. This in turn would unnecessarily increase the costs of legitimate pay-per-call services. In short, there is no record that costs would not outweigh benefits, and Sprint opposes such a requirement.

D. Questions 32 and 37. Record Keeping Requirements. Question 32 refers to the requirement in proposed section 308.6 that common carriers that provide telephone services to pay-per-call providers should make available to the FTC certain records and financial information concerning their arrangements with pay-per call providers. Question 32 asks whether the new rules should specify the records to be kept and the length of time for record retention. Question 37 asks whether billing entities, providing carriers, and vendors should be required to maintain records with regard to the billing and collection of pay-per-call services, similar to the requirements imposed upon creditors by the Truth in Lending Act and Fair Credit Billing Act.

Common carriers should not be required by the FTC to record, retain, or report pay-per-call services information other than the call detail records currently required by the FCC. The FCC requires carriers to keep call detail records for eighteen months.[5] This requirement applies to all messages billed by a common carrier for itself and for another carrier. The call detail records provide the originating and terminating telephone number. These record also contain and the date, time and duration of the call as well as the amount billed to the customer.

These records provide the back-up for the services provided by common carriers acting as billing entities and/or providing carriers in any pay-per-call service transaction, and Sprint suggests that, as to common carriers, the FTC's rules should mirror the FCC rule. To the extent the FTC believes additional records are needed regarding the underlying transaction -- the sale of goods or services through the pay-per-call provider -- the FTC should impose these additional requirements on the provider of the pay-per-call service.

E. Question 34.a. Financial Responsibility for Calls Placed on the Subscriber's Telephone Line. The FTC questions whether "a customer [should] be permitted to assert as a billing error a telephone-billed purchase that was not made by that customer but made by another resident of the customer's household using the

5. 47 C.F.R. Section 42.6.

customer's telephone." Sprint believes that a customer should not be able to assert that a telephone-billed purchase made by someone else using the customer's telephone is a "billing error." If the FTC were to permit such an assertion, it would create a convenient means to avoid payment for purchases of legitimate goods and services because the validity of the assertion cannot be easily tested. Indeed, it is extremely difficult, if not impossible, to investigate disputes concerning whether a call from a subscriber's telephone was authorized.

The subscriber must be held responsible for the use of its telephone service. This issue is fundamental to the integrity of telephone subscribership. Indeed, most common carriers' tariffs generally hold, as they must, the subscriber responsible for the payment of all charges for telephone service. If the subscriber is not held responsible, the number of "unauthorized" calls will undoubtedly dramatically increase. The financial impact will be borne by the balance of pay-per-call customers.

Accordingly, Sprint believes the FTC must modify proposed Rule 308.7(a)(2)(i) by deleting "made by the customer nor" such that the rule will read:

> A reflection on a billing statement of a telephone-billed purchase that was not made from the telephone of the customer who was billed for the purchase or, if made, was not in the amount reflected on such statement.

F. Question 35. Written Acknowledgment of Billing Error Allegation. Section 308.7(b) of the proposed rule allows a customer to orally assert a billing error. Proposed Section 308.7(d)(1) requires, with limited exceptions, the billing entity to acknowledge the customer's billing error notice in writing. The FTC questions whether the rules should be modified to require the customer to send written notice of a billing error and to allow the billing entity to acknowledge the notice orally or in writing.

Sprint opposes the requirement that customers must provide the billing entity written notification of a billing error when the billing entity is a common carrier. Likewise, Sprint does not believe the billing entity should be required to provide written acknowledgment of the billing error notice or of the ultimate resolution of the billing error, when a common carrier is the billing entity. Common carriers, by the very nature of their business, deal with their customers by telephone. Customers expect to deal with their telecommunications providers in this manner, and Sprint believes this procedure has worked well. Additionally, the customer will receive written notification through his or her regularly rendered billing statements. No further written notifications are necessary. Further, Sprint does not have systems in place to generate written notifications as proposed by the FTC. The development and implementation of such systems will be extremely costly.

Accordingly, Sprint does not believe any modification is required to Section 308.7(b), but that Section 308.7(d)(1) must be modified to eliminate the requirement of written communications from the billing entity, when the billing entity is a common carrier.

G. Question 40. New types of pay-per-call services other than 900 number line services. In Question 40 the FTC asked if there are new types of services, other than 900 number services, that constitute "pay-per-call services." The most publicized example is where the customer calls a toll-free 800 number and then, either automatically or mechanically, receives a return collect call. The FTC acknowledges this 800/collect call combination and in proposed section 308.5(h) prohibits the use of such dialing patterns by pay-per-call providers. Sprint endorses this prohibition and agrees that such 800/collect call pay-per-call services should be prohibited.

However, the FTC needs to be aware that when a LEC is acting as the billing entity, it will not know when a pay-per-call service has been provided in the 800/collect call combination. When the record from such a transaction is sent to the LEC for billing, all the LEC will see is a collect call. There will be nothing in the record received by the LEC that indicates the collect call was initiated by an 800 call. Thus, the LEC will have no way of knowing that a pay-per-call service was provided or that the Act has been violated.

H. The Period to Initiate a Billing Review Should Not be Extended Beyond 60 days. Proposed section 308.7(b) provides that a customer may initiate a billing review of a telephone-billed purchase by notifying the billing entity no later than 60 days after transmission of the first billing statement that contains a charge for the telephone-billed purchase. Sprint believes that 60 days is a reasonable time, and, generally Sprint's on-line systems are large enough to maintain records regarding a specific call for 60 days.

The only situation that might justify a longer period is where customers can prove they were told by the pay-per-call provider to allow more than 60 days for delivery of the specific goods or services. Sprint believes these situations will be rare enough that it can accommodate requests for such billing records on a case by case basis. Although call detail records may not be available on an on-line system after 60 days, an archival record will be retained for eighteen months.

III. CONCLUSION

Sprint endorses the effort of the FTC and, for the most part, agrees with the proposed rules. However, those rules must be modified, as suggested above, to more clearly focus the impact and burdens of the rule upon the pay-per-call provider. It is the pay-per-call provider, as the actual vendor of the goods and services, not the LEC or IXC common carrier, that is in the best position to provide customer satisfaction and correct responses to alleged billing errors.

Respectfully submitted,

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April 12, 1993

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 19th day of April, 1993, sent via hand delivery a copy of the foregoing "Comments of Sprint" In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act , CC Docket No. 93-22, filed this date with the Secretary, Federal Communications Commission, to the persons on the attached service list.

Melinda L. Mills

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